IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FRED D. HILLIARD, As Receiver of JESSE M. CHASE, INC., A Corporation,

Appellant,

vs.

LOUISE B. MUSSELMAN SISIL,

Appellee.

Petition For Rehearing

F. M. BISTLINE
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To the Honorable United States Court of Appeals for the Ninth Circuit:

Appellant respectfully petitions for a re-hearing upon the grounds and reasons as hereinafter set forth:

As we read the written opinion filed October 27, 1951, this court rests its conclusion that the trial court was correct in finding that Jesse M. Chase at the time he transferred his business properties to the Jesse M. Chase, Inc., corporation, in exchange for stock in said corporation was acting with intent to hinder, delay and defraud creditors, because there was a violation of the Bulk Sales Law of the State of Idaho, Section 64-701, et seq., Idaho, in that same constituted a badge of fraud.

From a thorough reading of the opinion we find no statement by the court as to what this violation consisted of.

In our original brief we called attention to the fact that a compliance is required in Idaho, only when the sale is "for cash or on credit." If it is the court's position that a transfer of stock in trade to a corporation organized to take over the business for its capital stock is a sale for "cash" or "on credit," we believe that it should clarify its stand. We see no need to repeat our citations and argument on this point, they are covered in appellant's original brief.

Since this appears to be the only badge of fraud found, we rest our petition for rehearing entirely on this point.

If on the other hand we have not read the opinion correctly and the court relies on other evidence to establish the "intent to hinder, delay or defraud creditors" at the time of the transfer from the individual to the corporation, we can do nothing other than ask for a re-examination of the record.

There are other matters in connection with the opinion that we deem it advisable to call to the court's attention:

The last sentence of the first paragraph of said opinion reads as follows:

> "Chase and wife turned in by warranty deed, dated February 10, 1947, four lots in Pocatello, upon which was a garage."

We feel that a complete statement of this transaction would require a statement by the court that common stock in the corporation was issued to Chase and wife in consideration therefor for the value that the same was carried on the books as appeared from the balance sheet of December

31, 1946, on which the transfer was based.

We also call attention to the following statement on page 3 of the opinion:

> "The findings of the Trial Court are supported by substantial evidence and, since no error appears there is no reason to disturb them."

We feel that it would be more proper if the court had set forth, at least in a general way, the evidence relied upon. Appellant's case on appeal is based entirely upon the point that there is no evidence in the record supporting these findings, and, such being the case, it would seem that a court should set forth the evidence supporting the findings.

Attention is also called to the following statement:

> "The evidence shows Chase did not retain enough property to satisfy his debts."

This we feel contradicts the court's own statement in the first paragraph of its opinion. Also we submit that there is no evidence whatever in the record going to the question as to whether or not Chase had other assets after the transfer was made. If the evidence does so show, we feel that the court should make specific reference to it.

By way of further suggestion, we feel that, in view of the fact that appellee raised the question of the right of the appellant to proceed in his name with the quiet title suit after transfer of the property to the C. C. Anderson Company of Caldwell, Idaho, during the pendency of the suit, that, it would be advisable for the Court to make a specific statement with regard thereto for the future guidance of the bench and bar.

CONCLUSION.

Appellant, as Receiver, is interested only in getting th correct ruling in the case. The final outcome of the case in nc way affects him personally. However, he sincerely feels tha the opinion filed does not reflect a correct application of the law to the facts of this case as disclosed by the record, and therefore, respectfully urges that a re-hearing be granted.

Respectfully submitted,

F. M. Bistline

R. Don Bistline,

Attorneys for Appellant,

Residence and Post Office Address:
Pocatello, Idaho.

STATE OF IDAHO }
COUNTY OF BANNOCK } ss.

I, F. M. Bistline, do hereby certify that I am one of the attorneys of record for the appellant in the above entitled cause; that the foregoing petition for re-hearing is well founded, and that it is not interposed for delay.

Of Counsel for Appellant.